

CORPORATION TAX ACT 2009

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Part 5: Loan Relationships

Overview

Chapter 10: Insurance companies

Overview

1189. This Chapter rewrites the provisions on insurance companies from Schedule 11 to FA 1996. These mainly deal with the treatment of deficits.

Section 386: Overview of Chapter

1190. This section sets out what is in the Chapter and gives signposts to other provisions specific to insurance companies. It is new.

Section 387: Treatment of deficit on basic life assurance and general annuity business: introduction

1191. This is the first of five sections providing special rules for the treatment of deficits on loan relationships of insurance companies which arise on basic life assurance and general annuity business. It is based on paragraph 4(1) of Schedule 11 to FA 1996.

Section 388: Basic rule: deficit set off against income and gains of deficit period

1192. This section gives the basic rule on set-off. It is based on paragraph 4(2) of Schedule 11 to FA 1996.

1193. *Subsection (1)* requires the deficit to be offset first against any income and gains relating to basic life assurance and general annuity business of the deficit period. This avoids the necessity of a claim. See *Change 58* in Annex 1.

1194. Paragraph 4(2)(a) of Schedule 11 requires the deficit to be set off to be against any income or gains of the deficit period referable to basic life assurance and general annuity business and arising or accruing otherwise than in respect of loan relationships. The words “arising or accruing otherwise than in respect of loan relationships” have not been rewritten. If a company has such income and gains they must be other than in respect of loan relationships since, by definition, the company has a loan relationship deficit and no non-trading income and gains on its loan relationships.

Section 389: Claim to carry back deficit

1195. This section provides for a claim to be made to carry back the excess if a deficit exceeds the income and gains of the deficit period. It is based on paragraph 4(3), (5) and (15) of

*These notes refer to the Corporation Tax Act 2009
(c.4) which received Royal Assent on 26 March 2009*

Schedule 11 to FA 1996. The deficit must be set off against the company's "available profits", defined in the following section.

1196. *Subsection (5)* replaces "the Board" in paragraph 4(15) with "an officer of Revenue and Customs". See *Change 1* in Annex 1.

Section 390: Meaning of "available profits"

1197. This section explains what is meant by "available profits" in the preceding section. It is based on paragraph 4(7) to (11) of Schedule 11 to FA 1996.

Section 391: Carry forward of surplus deficit to next accounting period

1198. This section provides that the deficit should be carried forward to the next accounting period so far as it is neither set off against the deficit period nor carried back to a period before the deficit period. It is based on paragraph 4(4) of Schedule 11 to FA 1996.

Section 392: Exclusion of loan relationships of members of Lloyd's

1199. This section prevents this Part from applying to loan relationships of corporate members of Lloyds which are assets or liabilities of a premium trust fund. It is based on paragraph 7 of Schedule 11 to FA 1996.

Section 393: General rules for some debtor relationships

1200. This section provides rules for determining the credits and debits of a debtor loan relationship of an insurance company which is referable to any category of an insurance company's long-term insurance fund. It is based on paragraph 3A of Schedule 11 to FA 1996.

Section 394: Special rules for some debtor relationships

1201. This section provides special rules for referring credits and debits in respect of those debtor relationships which are liabilities of a long-term insurance fund to particular categories of the company's long-term business. It is based on paragraph 3A of Schedule 11 to FA 1996.
1202. *Subsections (4), (5) and (6)* deal with deposit back arrangements. Deposit back arrangements arise where reinsurers of pension annuities deposit back all or a substantial proportion of the premium paid with the original insurer. The original insurer may then pay interest to the reinsurer on that deposit back. "Deposit back arrangements" are defined in section 431(2) of ICTA.